# STATE OF MICHIGAN

# COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

REUBEN HARDIMAN,

Defendant-Appellant.

UNPUBLISHED
April 24, 2007

No. 268414
Oakland Circuit Court
LC No. 2004-196749-FH

Before: Cavanagh, P.J., and Jansen and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of felon in possession of a firearm (felon-in possession), MCL 750.224f, possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, and possession of marijuana, MCL 333.7403(2)(d). He was sentenced to a term of five months to five years in prison for the felon-in possession conviction and a consecutive two years in prison for the felony-firearm conviction.[1] We affirm. This appeal is being decided without oral argument. MCR 7.214(E).

Appellate review of unpreserved claims of prosecutorial misconduct is generally precluded because the trial court is otherwise deprived of an opportunity to cure the error. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). However, a defendant may seek review of improper prosecutorial remarks if a curative instruction could not have eliminated the prejudicial effect, or if failure to consider the issue would result in a miscarriage of justice. *Id.*; *People v Rodriguez*, 251 Mich App 10, 30; 650 NW2d 96 (2002). Review of unpreserved claims is for plain error. *People v Thomas*, 260 Mich App 450, 453-454; 678 NW2d 631 (2004).

Defendant maintains that the prosecutor committed misconduct by repeatedly emphasizing that the police had received judicial authorization to search defendant's home, and used this to argue during rebuttal that "[t]he evidence in this case is very, very strong, and indicates quite clearly that the police and magistrate who signed the search warrant knew what they were doing in order to put a drug dealer out of business." Defendant contends that with this statement the prosecution improperly bolstered its case using the prestige of the magistrate who

[1] Defendant was sentenced to time served in jail for the marijuana conviction.

signed the warrant. See *People v Boske*, 221 Mich 129, 133-134; 190 NW 656 (1922) (where the prosecutor argued that "the sheriff 'knew that he had the guilty man'"); see also *People v Humphreys*, 24 Mich App 411, 418; 180 NW2d 328 (1970) (where the prosecutor argued that "'if the defendant in the opinion of the police and in my opinion were innocent of this charge, we would not be here right now'").

The statement in *Boske* was condemned because "it was the duty of the jury to pass upon the facts and decide the question of guilt or innocence uninfluenced by the opinions of others." *Boske*, *supra* at 134. Similarly, the statement in *Humphreys* was condemned because the prosecutor effectively expressed "a belief in the defendant's guilt without relating the belief to the evidence." See *Humphreys*, *supra* at 414.

However, the prosecutor's statement in this case does not raise the same concerns as did the statements in *Boske* and *Humphreys*. The natural import of the statement here is the prosecutor's claim that the charges against defendant were supported by the evidence presented, not that the jury should convict defendant solely because the magistrate or investigating officers thought he was guilty. Although the statement may have been inartfully made, it was not clearly improper.

A prosecutor is free in argument to relate the facts to his theory of the case, and in doing so may "say that certain evidence leads him to believe the defendant is guilty." *Humphreys*, *supra* at 414. Indeed, a prosecutor's remarks regarding a belief in the defendant's guilt are not improper so long as the remarks are rationally tied to the evidence presented. *Id*. A prosecutor may argue the evidence and all reasonable inferences arising therefrom, *People v Fisher*, 220 Mich App 133, 156; 559 NW2d 318 (1996), and need not argue in the blandest possible terms, *People v Aldrich*, 246 Mich App 101, 112; 631 NW2d 67 (2001).

We also note that any prejudice in this case could have been cured by a timely and appropriate instruction, had defendant objected to the prosecutor's statement. Indeed, even in spite of defendant's failure to object, the trial court instructed the jury that the attorneys' arguments were not evidence, and that it was to decide defendant's guilt based solely on the evidence presented. Such an instruction is sufficient to cure the prejudicial effect of most inappropriate prosecutorial statements, *Humphreys*, *supra* at 414, and jurors are presumed to follow their instructions, *People v Mette*, 243 Mich App 318, 330-331; 621 NW2d 713 (2000). Finally, any claim that the jury abrogated its fact-finding duties to the magistrate or the investigating officers is undercut by the fact that the jury actually acquitted defendant of a greater delivery charge and an additional felony-firearm charge. Under the circumstances, we find that defendant has shown no plain error, *Thomas*, *supra*, and is entitled to no appellate relief.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Stephen L. Borrello